1981

Sweetwater Properties et al v. Town of Alta, Utah : Reply Brief of Town of Alta on Rehearing

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

SWEETWATER PROPERTIES, SBC INVESTMENT COMPANY and BLACKJACK TRUST, Plaintiffs and Respondents,	:	
vs.	:	Case No. 17064
TOWN OF ALTA, UTAH, a municipal corporation, Defendant and Appellant.	:	

REPLY BRIEF OF TOWN OF ALTA ON REHEARING

Appeal from Judgment of the Third District Court
In and For Salt Lake County
The Honorable James S. Sawaya, District Judge

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REPLY BRIEF OF TOWN OF ALTA

ON REHEARING

NATURE OF THE CASE

The Town of Alta adopts the statement of the Nature of the Case set out in its Brief on Rehearing.

PRELIMINARY STATEMENT OF FACTS

Alta refers this Court to its Preliminary Statement of Facts in its Brief on Rehearing.

SUMMARY STATEMENT OF POSITION

As previously stated, (see Brief of Town of Alta on Rehearing at 2), the issue ordered for argument on Rehearing

in no way affects the merits of the controversy between the parties to this action. Sweetwater attempts in its Brief on Rehearing to twist the issue of "the circumstances under which Alta may sua sponte initiate a Policy Declaration" to affect the merits of this case. In so doing, Sweetwater exceeded the limited issue for rehearing by raising issues not presented at the trial or to this Court on appeal.

In response to the attempts of Sweetwater and Salt Lake County to ignore the Court's Order, Alta will file a Motion to Strike their Briefs on Rehearing. Without waiving its rights under that motion, and calling this Court's attention to Alta's Memorandum in Support thereof, Alta submits this Reply to the Briefs of Sweetwater and Salt Lake County.

A R G U M E N T

POINT I

THE MUNICIPAL ANNEXATION STATUTE DOES NOT REQUIRE A PETITION BY AFFECTED LANDOWNERS BEFORE A MUNICIPALITY MAY ADOPT A POLICY DECLARATION.

Sweetwater argues for the first time in its Brief on Rehearing that a petition of affected landowners is a legal condition precedent to even the adoption of a Policy Declaration by Alta. That is a novel concept, never before heard at any time in this case. Notwithstanding that fact, Alta will be

remiss in its duties to the Court if it does not respond to such erroneous argument in this Reply.

Any rational analysis of the subject statute, 10-2-414, et seq. makes it manifest that a landowner petition is not required prior to the enactment or adoption of a Policy Declaration with regard to potential annexation of property. 10-2-414 states, in part:

> "Before annexing unincorporated territory having more than five acres, a municipality shall, on its own initiative, . . . adopt a policy declaration with regard to annexation."

The legislature could not have stated this proposition more clearly. Moreover, Sweetwater's present assertion is belied in its Brief in Support of Petition for Rehearing at 5:

> "It is true, of course, that a municipality may create a policy declaration before receiving a petition to annex." § 10-2-414. (Emphasis added.)

Section 10-2-414 is in no way circumscribed by § 10-2-416 as both Sweetwater and Salt Lake County contend. The intent of the legislature as evidenced on the face of the statute taken as a whole clearly indicates that the reverse is true. At the very best, 10-2-416 is ancillary to 10-2-414, following the more omnibus provisions of the annexation process contained in Section 414. The first sentence of § 10-2-414 states in pertinent part:

> "Before annexing unincorporated territory having more than five acres, a municipality shall, on its own initiative, on the recommendation of its planning commission, or in

> response to an initiated petition by real property owners as provided by law, . . . adopt a policy declaration with regard to annexation.

The only express provision in the statute for a petition by landowners is contained in § 10-2-416. The Act indicates three methods of initiating a policy declaration, one of which implicitly refers to § 10-2-416. It is therefore nothing short of preposterous to argue that the entire Act, including the clear language of § 10-2-414, is (to use the language of Sweetwater) "circumscribed by 10-2-416" alone and that a petition of adjoining landowners under § 10-2-416 is required before a policy declaration even can be adopted by a municipality. That tortured interpretation not only makes a wreck out of accepted rules of statutory construction, but it renders sterile and impotent the policy, purpose and language of 10-2-414 which unambiguously and unequivocally provides that Alta may, on its own, fashion and adopt a Policy Declaration regarding potential annexation of property.

Sweetwater's construction of the Act fails for another obvious reason. Section 10-2-414, as quoted above, refers to "an initiated petition." (Emphasis added.) The reason for including the underscored adjective was clearly designed so that municipalities could adopt a policy declaration and begin the planning process without waiting for the petition procedures of § 10-2-416 to be completed, which include the signatures of a majority of the property owners and

the filing of a plat or map. This phrase of § 10-2-414 is an additional indication that a municipality may adopt a policy declaration without the prior filing of a petition by affected landowners.

We turn now to 10-2-416 and the statutory objective which it achieves. The purpose of 10-2-416 is clearly to provide a single procedure by which landowners may initiate annexation by a municipality. Section 10-2-416 does not indicate in any way that a petition must be received before a policy declaration is prepared. Sweetwater again invents, for the first time in this Case, a new twist to the landowner petition as a sole method for annexation. It claims that the Statute, 10-2-414, requires two policy declarations: (1) A "long-range planning" policy declaration that may be adopted without petition of landowners but cannot be utilized by the municipality to annex without petition; (2) A "specific" policy declaration initiated by landowners' petition to annex a particular parcel of land. The latter being the only policy declaration employed in the annexation process. This novel interpretation, bifurcating 10-2-414 policy declarations, finds no support in the language of the Municipal Annexation Code.

POINT II

THE MUNICIPAL ANNEXATION STATUTES DO NOT MANDATE A PETITION FROM LANDOWNERS FOR ANNEXATION

The final sentence of one specific statute, 10-2-416 of the Municipal Annexation Code, reads as follows:

> "Except as provided for in Section 10-2-420, no annexation may be initiated except by a petition filed pursuant to the requirements set forth herein."

Seizing upon this one sentence, Sweetwater and seemingly Salt Lake County now urge for the first time on rehearing in this entire Case that a landowner petition is the sole means by which any municipal annexation may take place. The fallacy of the argument is readily apparent on the face of the Statute, itself, as well as the policy which the larger Annexation Code effectuates.

The "title" to 10-2-416 is a plain indication that the contention of Sweetwater in Salt Lake County is in troubled waters. It provides that the subject matter of Section 416 relates to "Petitions by landowners for annexation . . . ." While a title to a statute is not a substantive part of the enactment, the controlling case precedent of this Court is instructive that it may be utilized by the Court in interpreting the substantive elements of the enactment. Great Salt Lake Authority v. Island Ranching Co., 18 Utah 2d 45, 414 P.2d 963 (1966).

Secondly, an examination of 10-2-416 manifests that the Statute, in its entirety, is directed at a petition for annexation initiated by landowners. The procedure relating to the initiation, sua sponte, by a municipality of a Policy Declaration under 10-2-414 is not even so much as mentioned in Section 416. Were it the intention of the legislature that the concluding sentence of Section 416 was to sweep and bind the entire field of municipal annexation under 10-2-414, it would have plainly so announced, rather than tucking away such a dispositive and emphatic result to an obscure position in a Statute dealing only with the annexation process by landowner petition. Indeed, to buy the argument of Sweetwater and the County on this score would be a textbook case of the "tail" of Section 416 "wagging the dog" of the entire Municipal Annexation Code.

Thirdly, the only rational and consistent interpretation of the closing sentence of 10-2-416 is that it refers, as does the Statute as a whole, to the sole manner for landowners to initiate the annexation process. Section 416 does not refer to the initiation of the annexation process by a municipality. If a landowner is desirous of annexing his property or adjacent property to a municipal corporation, he must follow the requirements of Section 416. There is no

other choice and the Statute so provides. On the other hand, 10-2-414 explicitly sets forth the authority of the municipality to engage in a Policy Declaration regarding potential annexation without any landowner consent whatsoever.

Sweetwater and Salt Lake County argue that the single exception to the annexation process being initiated by a landowner petition is spelled out in 10-2-420. The latter statute bears upon the entitlement of a landowner to petition a municipality to serve an island or peninsula of urbanized territory by annexation. The answer to the claim of Sweetwater and the County is, of course, that a petition under 10-2-420 is permissive and not mandatory. It is wholly distinctive from a Section 416 petition by abutting landowners, because a Section 420 petition, standing alone, does not initiate the annexation process and because the initiation of a Policy Declaration by the municipality with regard to potential annexation requires the landowner to protest that Policy Declaration. Nothing in either 10-2-416 or 10-2-420 begins to suggest that a Policy Declaration under 10-2-414 of a municipality does not provide a method leading to potential annexation.

As §10-2-416 does not, and was never intended to, provide the sole method for annexation <u>by municipalities</u>, the statute, in §§10-2-414 and 415, clearly provides a method whereby a municipality <u>could conceivably</u> annex in the face of

landowner disapproval. The landowner is not left without recourse, however, because 10-2-415 allows for notice, consultation and protest by affected entities. As Sweetwater recognized in its Brief in Support of Petition for Rehearing at 8: "The purpose [of section 10-2-414] is plain and landowners have a right to full and fair disclosure so that they may make an informed choice whether to consent or refuse, and whether to enlist the aid of a county or local entity in seeking Boundary Commission Review." (Emphasis added).

It is clear that the Municipal Annexation Act does not require a petition from an affected landowner before the municipality initiates a policy declaration which may ultimately lead to annexation of the territory. The Act was established to permit municipalities to participate in sound urban development adjacent to and outside their boundaries, resolve conflicts between political entities, and to efficiently provide municipal services. The policy and purpose of the Act underscores the fact that annexation by petition of landowners is not the sole method for annexation. Salt Lake County agrees that the Act was passed by the legislature to provide municipalities certain control measures over development beyond their boundaries under the requirements of 10-2-418. (See Brief of Amicus Curiae Salt Lake County upon Rehearing at 14-14). This legislative purpose is supported by the policy expressed in 10-2-401(6).

C O N C L U S I O N

The Court has sought, on rehearing, a statutory analysis relative to the circumstances under which Alta may, on its own motion, initiate a policy declaration regarding annexation. The answer lies in an examination of the legislative objective of municipal annexation as well as the delegated power of a municipality to implement that legislative policy.

In light of all that has been said, viewed particularly against the flawed arguments of Sweetwater and Salt Lake County, it is quite clear that a municipal corporation may initiate a policy declaration regarding potential annexation of abutting property. It may do so in consideration of present and future municipal services, growth of the community, development on the lip of the municipality which takes advantage of City services without paying for them, and a coterie of other public interest questions. Such an initiated policy declaration may lead to annexation under 10-2-414 and 415, unless there is a protest by an affected entity under Section 415 or an abutting property owner under Section 418.

All of such circumstances are, however, quite irrelevant to the facts of the Case at Bar. Those facts leave nothing in contest that Alta, in adopting a policy declaration, regarding the Sweetwater property, did not, in law or in fact, annex Sweetwater. Sweetwater objected to the policy declaration and thereby activated the provision of 10-2-418.

The unanimous opinion of this Court dated January 14, 1981, reversing the District Court and affirming the validity of the Alta Policy Declaration of September 13, 1979, should not be disturbed or impaired on rehearing. To do so would mandate a finding by this Court that a policy declaration could not have been initiated by the Town of Alta without Sweetwater having filed an earlier petition for annexation. That newly invented argument on rehearing is not only at war with the most fundamental of the appellate rules of this Court, but it would render vacuous and impotent large sections of the Annexation Code of 1979.

The holding of this Court of January 14, 1981, should be affirmed and the case remitted to the District Court for Salt Lake County with directions to dismiss the Complaint of Plaintiffs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing REPLY BRIEF OF TOWN OF ALTA ON REHEARING were served on counsel of record at the respective addresses indicated, by mailing said copies to their offices, first class mail, postage prepaid, this 21st day of May, 1981:

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